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U.S. SUPREME COURT

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8 IN THE

9 SUPREME COURT OF THE UNITED STATES

10 October Term, 1955

11 No. 92

12 MABEL BLACK and T. Y. WULFF, etc.,

13 Petitioners,

14 v.

15 CUTTER LABORATORIES, a corporation,

16 Respondent.

17  
18 OPPOSITION TO MOTION TO CONTINUE HEARING

19  
20 Respondent opposes the motion to continue the hearing  
21 in the above cause heretofore filed herein by petitioners on the  
22 following grounds:

23 1. Due to delays in the designation of the portion  
24 of the record to be printed, for which petitioners were re-  
25 sponsible, the hearing of this cause has been delayed beyond the  
26 normal period required for preparing a cause for oral argument to  
27 the extent that, as we are informed, it is one of the oldest  
28 causes in point of time awaiting hearing by this Court. The  
29 undersigned is presently engaged in the preparation of the brief  
30 for respondent, which will be printed and filed within the time  
31 allowed by the rules.

32 The convenience of the Court would not be served by

1 continuing the argument until after the petitions in the Yates,  
2 Mesarosh, Scales and Lightfoot cases are heard, since the issues  
3 in the instant case are not essentially the same as those in  
these Smith Act cases.

4 The instant case is a proceeding to review a decision  
5 of the California Supreme Court directing that an arbitration  
6 award be vacated on grounds of public policy. The proceedings  
7 in the Yates, Mesarosh, Scales and Lightfoot cases, on the other  
8 hand, are to review decisions of the Federal courts affirming  
9 convictions under the Smith Act.

10 The motion herein states that petitioners in the Yates,  
11 and Mesarosh cases are seeking a review of the findings of fact  
12 of the courts below on the ground of the insufficiency of evi-  
13 dence to support a finding that the defendants were connected  
14 with a conspiracy to advocate revolution by force and violence.  
15 In the instant case, on the other hand, the Arbitration Board  
16 found that Doris Brin Walker, the employee involved in the pro-  
17 ceeding, was a member of the Communist Party personally dedicated  
18 to that party's program of sabotage, force, violence, and the  
19 like. Petitioners in their opening brief on file with this Court  
20 assert that the findings of fact of the Arbitration Board are  
21 conclusive and non-reviewable by the Courts (Brief, p. 6).

22 While at a later point in their brief, petitioners  
23 make an extended argument attempting to show that the above-  
24 mentioned finding of the Arbitration Board is not supported  
25 by substantial evidence, the central issue in the case is  
26 whether petitioners have any standing in this Court to have  
27 this fact finding of the Arbitration Board, which was re-  
28 viewed and reaffirmed by the Supreme Court of California,  
29 reviewed and set aside by this Court. The distinction between  
30 a civil proceeding in a State Court to enforce the award of  
31 an Arbitration Board and criminal proceedings in Federal  
32

1 Courts to punish violations of the Smith Act is so apparent that  
2 the matter will not be further labored.

3       2. A. L. Wirin, whose convenience is given as one  
4 ground for the motion, first appeared in the case as one of the  
5 attorneys for petitioners when the petition for writ of certiorari  
6 was filed with this Court. He did not participate in the hearing  
7 before the Arbitration Board or in any stage of the court pro-  
8 ceedings for the review of the arbitration award until petitioners  
9 filed their petition for rehearing by the California Supreme  
10 Court. At that time he and his firm joined with other attorneys  
11 in appearing as attorneys for two amici curiae. On the other  
12 hand, his associate, Mr. Bertram Edises, conducted petitioners'  
13 case before the Arbitration Board, presenting all evidence and  
14 argument in behalf of petitioners, and prepared all pleadings  
15 and briefs and made all of the oral arguments for petitioners  
16 before all of the California courts.

17       All dealings which the undersigned has had in this  
18 case before this Court have been with Mr. Edises or his firm  
19 and with one exception, all of the stipulations and other  
20 papers prepared by attorneys for petitioners up to the instant  
21 motion have designated Mr. Edises' firm or Mr. Edises himself as  
22 the sole attorneys for petitioners. A stipulation in the Cal-  
23 ifornia Superior Court for the withdrawal of exhibits for use  
24 in connection with the petition for certiorari dated May 6, 1955,  
25 was signed by Edises, Treuhaft, Grossman and Grogan, by Bertram  
26 Edises, as attorneys for petitioners, omitting any mention of  
27 Mr. Wirin; the notice to counsel for respondent of the filing of  
28 the petition for writ of certiorari was signed by Mr. Edises  
29 alone as counsel for petitioners; the original designation of  
30 parts of record to be printed dated October 27, 1955, the desig-  
31 nation of additional parts of record to be printed dated Novem-  
32 ber 9, 1955, and petitioners' combined designation of parts of

record to be printed dated December 12, 1955, were also signed  
by Mr. Edises alone. As late as March 16, 1956, Mr. Edises  
presented to the undersigned and obtained a stipulation dated  
March 15, 1956, that either party may refer in briefs or oral  
argument to any portion of the official record not printed  
which was signed by Mr. Edises on behalf of the firm of Edises,  
Treuhaft, Grossman and Grogan as the sole attorneys for peti-  
tioners.

For the foregoing reasons, the undersigned respectfully  
suggests that petitioners have heretofore indicated by their own  
actions that Mr. Wirin does not play an active or significant  
role in the representation of petitioners in this cause.

3. In the belief that matters to be heard by this  
Court are of first importance, the undersigned counsel for  
respondent has so arranged and adjusted his professional en-  
gagements as to be free to argue the matter orally before the  
Court at the time now set for such argument, namely, during the  
week of April 23, 1956. A postponement of the argument until  
the next term will require the undersigned to make a similar  
adjustment at the time for which the argument is reset. The  
undersigned is engaged in a busy and demanding practice and  
repeated adjustments to meet the requirements of particular  
matters cause, and will cause, great inconvenience to him. In  
contrast to Mr. Wirin's position in this matter, the undersigned  
and his partner, Thomas E. Stanton, Jr., who will also parti-  
cipate in the oral argument before this Court, have represented  
respondent throughout the proceedings before the Arbitration  
Board and the Courts below and throughout the proceedings in  
this Court.

1 For the foregoing reasons respondent respectfully  
2 submits that the motion should be denied.

San Francisco, California

March 28, 1956

Respectfully submitted,

GARDINER JOHNSON  
Attorney for Respondent